

BEFORE THE BOARD OF VETERINARY MEDICINE  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 8.64.402, ) ON PROPOSED AMENDMENT  
fee schedule and the proposed ) AND ADOPTION  
adoption of NEW RULES I-X, )  
relating to animal euthanasia )  
technicians and agencies )

TO: All Concerned Persons

1. On April 15, 2004, at 1:30 p.m., a public hearing will be held in room 471, of the Park Avenue Building, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Veterinary Medicine no later than 5:00 p.m., on April 9, 2004, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394, Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdrv@state.mt.us.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: These rules are proposed to implement the certification of euthanasia technicians and agencies in response to Chapter 60, L. 2003 (House Bill 181) passed by the 2003 Legislature. The Board is also proposing fee increases for embryo transfer technicians and veterinarians.

4. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

8.64.402 FEE SCHEDULE  
(1) Veterinarians  
(a) Annual renewal of certificate of registration \$ ~~35~~ 65  
(b) through (2)(a) remain the same.  
(b) Annual renewal of certification 25 65  
(c) Late renewal fee 50  
(3) Euthanasia technicians and agencies  
(a) Technician application 80  
(b) Technician renewal 70  
(c) Technician late renewal 50  
(d) Agency application 150  
(e) Agency renewal 125  
(f) Agency late renewal 50

(g) Agency inspection

200

AUTH: 37-1-134, 37-18-202, 37-18-603, MCA

IMP: 37-1-134, 37-1-304, 37-1-305, 37-18-302, 37-18-307, 37-18-603, MCA

REASON: Section 37-1-134, MCA requires licensing boards to establish fees commensurate with costs. The proposed amendment to (1)(a) will raise renewal fees for veterinarians in the amount of \$30, from \$35 to \$65. Based on 998 active veterinary licenses, the Board estimates that its revenue will increase by \$29,940 annually. Increased administrative recharges from the Department in the amount of \$4,685 for the biennium, and increased workload necessitate raising the revenue base to meet the expected expenditures. The Board finds that this increase is reasonable and necessary as at the current level of revenue, the program is projected to have a negative cash balance in early FY 05. This change will affect all Montana-licensed veterinarians.

The proposed amendment to (2)(b) will raise renewal fees for embryo transfer technicians (ETTs) in the amount of \$40, from \$25 to \$65. Based on the current number of ETTs, this change will affect 11 embryo transfer technicians currently licensed, resulting in an estimated annual fee increase of \$440. The proposed addition of (2)(c) will add a late renewal fee for embryo transfer technicians as is standard with all the Board's professions. The additional costs of tracking, certified mailings, and both the administrative and Board time involved in the late renewal process should be borne only by those who renew after the deadline date. It is anticipated that this change will affect approximately two ETTs annually who renew after the required date, resulting in \$100 additional revenue for the Board each year. The Board believes these changes are reasonable and necessary as the costs of the embryo transfer program, particularly the Board-prepared examination, are not commensurate with the current amount of revenue collected from these 11 licensees.

There is reasonable necessity to implement application, renewal, and inspection fees (3)(a)-(g), to fund the certification program for animal euthanasia technicians and agencies pursuant to Chapter 60, L. 2003 (House Bill 181) that was passed by the 2003 Legislature. The law became effective January 1, 2004. The fee amounts proposed are based on the anticipated number of licensees, as estimated by the Humane Society of the United States - Northern Rockies Office, and are expected to generate revenue sufficient to cover projected program expenses. The Board estimates that 11 agencies will seek licensed status and 36 certified euthanasia technician (CET) licenses will be issued. The fees implemented here will affect all those seeking certification in Montana to obtain and/or administer a controlled substance for the purpose of animal euthanasia. During the first year, the Board estimates

that the initial application for license fees and inspection fees will total approximately \$6,730. After the initial licenses are issued, the Board estimates that renewal and inspection fees will generate annual revenue of \$6,095. The Board has no historical evidence upon which to estimate the number of agency or individual CET licenses that will be subject to a late fee.

5. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS As used in this sub-chapter, the following definitions apply:

- (1) "Animal" means any animal other than a human.
- (2) "Approved euthanasia drugs" means those controlled substances approved by the board for the purpose of euthanizing animals.
- (3) "Drug enforcement administration" or "DEA" means the federal agency for enforcement of narcotics laws.

AUTH: 37-18-202, 37-18-603, MCA

IMP: 37-18-603, MCA

NEW RULE II APPLICATION FOR INITIAL CERTIFICATION AS A CERTIFIED EUTHANASIA TECHNICIAN - QUALIFICATIONS - ENDORSEMENT

(1) Application for certification as a certified euthanasia technician (CET) must be made on forms prescribed by the board.

(2) Applications must include:

(a) a current, within two years, photograph of the applicant, certified by a notary;

(b) documentation of successful completion of a board-approved training program taken within three years from the application date;

(c) documentation of successful completion of a board-approved written and practical examination;

(d) verification of all current employment at certified agencies;

(e) Montana department of justice background check verifying that the applicant has no previous criminal convictions involving dangerous drugs and/or controlled substances, domestic violence, or animal cruelty;

(f) verification from any other state or province where the applicant is certified as a euthanasia technician, that the applicant has never had certification revoked, suspended or denied;

(g) verification that applicant is at least 18 years of age or an emancipated minor; and

(h) payment of the proper application fee.

(3) The board may allow submission of a current euthanasia technician license from another state or province to meet the requirements of (2)(b) and (c), if the board determines that the other state's or province's standards for the euthanasia certification are substantially equivalent to or greater than the standards of this state.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA  
IMP: 37-18-603, MCA

NEW RULE III BOARD-APPROVED TRAINING PROGRAM CRITERIA

- (1) To qualify for approval under [New Rule II], a euthanasia training program must:
- (a) be conducted by a qualified instructor;
  - (b) include but not be limited to instruction in:
    - (i) proper dosage and handling of approved euthanasia drugs;
    - (ii) human safety and proper injection techniques;
    - (iii) pharmacology of approved euthanasia drugs;
    - (iv) proper animal handling to ease trauma and stress;
    - (v) animal anatomy;
    - (vi) proper security precautions;
    - (vii) proper record keeping; and
    - (viii) appropriate verification of death; and
  - (c) issue a certificate of approval containing:
    - (i) name of applicant;
    - (ii) name of instructor;
    - (iii) title of course;
    - (iv) date of course;
    - (v) number of hours;
    - (vi) presentation format.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA  
IMP: 37-18-603, MCA

NEW RULE IV CERTIFIED EUTHANASIA TECHNICIAN TEST CRITERIA (1) A board-approved written and practical test for CETs must include:

- (a) Montana regulations governing CETs;
  - (b) state and DEA drug record keeping requirements including disposal of out-of-date drugs and reporting of loss or theft of drugs;
  - (c) human safety in administration of animal euthanasia;
  - (d) pharmacology of sodium pentobarbital;
  - (e) proper dosage and injection techniques of approved euthanasia drugs;
  - (f) animal anatomy; and
  - (g) verification of death.
- (2) A passing score on the written portion of the examination of 70% is required.
- (3) A passing score on the practical test will be determined by the successful completion of hands-on demonstrations which indicate that the applicant has been properly trained in procedures which enable the applicant safely and effectively to perform humane euthanasia with sodium pentobarbital. The practical examination will be graded on a pass/fail basis.
- (4) Applicants who fail to achieve a passing score on any portion of the exam will not be eligible for certification.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA  
IMP: 37-18-603, MCA

NEW RULE V INITIAL APPLICATION FOR CERTIFIED EUTHANASIA AGENCIES (1) A certified euthanasia agency (CEA) may purchase and possess controlled substances approved for the purpose of euthanasia. The application for initial certification as a CEA must be made on forms provided by the board.

(2) Applications must include:

(a) documentation of passage of an inspection by a board-approved inspector;

(b) a copy of completed application sent to the DEA to possess and store controlled substances approved by the board for the purpose of euthanasia, DEA number to be reported to board when issued;

(c) a list of all CETs or veterinarians employed by the agency with the day, month, and year that each individual began employment;

(d) indication of which CET is responsible for all aspects of euthanasia at the agency; and

(e) payment of the proper fee.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA  
IMP: 37-18-603, 37-18-604, MCA

NEW RULE VI CERTIFIED EUTHANASIA AGENCY INSPECTION CRITERIA - NOTIFICATION OF DEFICIENCIES AND CORRECTIONS

(1) An inspection of a CEA must be conducted annually by the board or a person authorized by the board with its full authority.

(2) The inspection must include:

(a) verification that the area and equipment is appropriate for animal euthanasia;

(b) verification of the correct security, storage, disposal and labeling of euthanasia drugs;

(c) verification of correct drug record keeping;

(d) appropriate sanitation; and

(e) any other condition that the board determines is relevant to the proper euthanasia of animals.

(3) If the inspector determines that a deficiency substantially affects the public health, safety, or welfare or jeopardizes animals under the control of the CEA, the inspector must immediately inform law enforcement and the board which may summarily suspend the CEA's certificate pursuant to 2-4-631, MCA and applicable Montana law. If a less serious deficiency is found after inspection, it must be communicated to the agency and the board in writing. The CEA must correct any such deficiency within 30 days from the date of the inspection. If a second inspection is required, a second inspection fee must be paid by the agency. Failure to sufficiently correct a noted deficiency will be addressed as a

disciplinary matter by the screening panel of the board and the board may notify the DEA.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA  
IMP: 37-18-603, MCA

NEW RULE VII TERMINATION OF CERTIFIED EUTHANASIA  
TECHNICIAN EMPLOYMENT - LAPSE OF CERTIFICATE (1) A CEA must notify the board in writing within 10 days of the date of termination of a CET. The certificate of the CET must be lapsed by the board upon notification that the technician is no longer employed by a CEA as required by law.

(2) A CET must notify the board in writing within 10 days of the change in employer or addition of a new CEA employer.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA  
IMP: 37-18-603, MCA

NEW RULE VIII APPROVED EUTHANASIA DRUGS (1) The following drug is an approved euthanasia drug:  
(a) sodium pentobarbital.

AUTH: 37-1-131, 37-18-603, MCA  
IMP: 37-18-603, MCA

NEW RULE IX ANNUAL RENEWAL OF CERTIFICATE - TECHNICIANS  
- CERTIFIED AGENCIES (1) CETs must re-certify on a form or by a method approved by the board on or before May 30 of every year, beginning in 2005. The certification renewal application must include:

(a) verification of satisfactory completion of a board-approved euthanasia course and examination documenting continued competency taken within the 36 months immediately preceding the current renewal deadline date;

(b) verification of current employment at a CEA; and

(c) payment of the proper fee.

(2) CEAs must renew certification on a form or by a method approved by the board on or before May 30 of every year, beginning in 2005. The renewal application must include:

(a) verification of completion of satisfactory inspection within 12 months of the current renewal deadline date;

(b) a list of currently employed CETs or veterinarians with day, month, and year that each individual began employment and indication of which CET is responsible for all aspects of euthanasia at the agency;

(c) the proper fee; and

(d) verification of current DEA registration.

(3) A renewal notice will be sent by the board to each certificate holder at the current certified agency address in the board's files at least 30 days prior to the renewal deadline. Failure to receive such notice must not relieve the

certificate holder of the certificate holder's obligation to pay certification renewal fees in such a manner that they are received by the department on or before the certification renewal date.

(4) A CET's or CEA's renewal certificate shall be valid for one year following the expiration date of the previously held certificate.

(5) The fee for any certificate holder who fails to re-certify or submit the proper fee prior to the expiration date must be increased by an amount determined by the board and specified in the fee schedule. Certification renewal forms may not be processed until all required documentation is received in the board office and all fees are paid.

(6) The board will randomly audit 10 renewals for CEAs and 10 renewals for CETs each year.

(7) Any certificate holder failing to renew a certificate within 90 days of the expiration date will be considered to have forfeited the certificate. If 90 days have passed, the CET or CEA must reapply to the board for an initial certificate to function as a CET or CEA and pay the required fee.

AUTH: 37-1-131, 37-18-202, 37-18-603, MCA

IMP: 37-18-603, MCA

NEW RULE X UNPROFESSIONAL CONDUCT (1) For the purposes of implementing the provisions of 37-1-319, MCA and in addition to 37-1-316, MCA, the board further defines unprofessional conduct as follows:

(a) violation of any state or federal statute or administrative rule regulating the practice of animal euthanasia, including any statute or rule defining or establishing standards of animal euthanasia or professional conduct or practice;

(b) cruel or inhumane treatment of animals;

(c) incompetence, negligence, cruelty, or use of any practice or procedure in the practice of animal euthanasia, which creates an unreasonable risk of physical harm to the animal, staff or public;

(d) possession, use, addiction to, diversion or distribution of controlled substances in any way other than for legitimate euthanasia purposes, or violation of any drug law;

(e) failure to cooperate with an investigation or inspection authorized by the board of veterinary medicine;

(f) failure to maintain sanitary facilities or apply sanitary procedures for euthanizing animals;

(g) practicing as a CEA or as a CET without a current certificate;

(h) willful or repeated violations of rules established by any health agency or authority of the state or a political subdivision thereof;

(i) resorting to fraud, misrepresentation or deception in the euthanasia of an animal;

- (j) failure to have current DEA registration;
- (k) failure to report to the board termination or change of employment for a CET within 10 days;
- (l) use of unapproved drugs for euthanasia; or
- (m) euthanasia of an animal for which the CET has not received training.

AUTH: 37-1-131, 37-1-319, 37-18-202, 37-18-603, MCA  
IMP: 37-1-131, 37-1-316, 37-1-319, 37-18-603, MCA

REASON: The Board of Veterinary Medicine proposes to adopt these rules for the certification of euthanasia agencies and technicians in response to Chapter 60, L. 2003 (House Bill 181) that was passed by the 2003 Legislature. The law became effective January 1, 2004. The Board believes it is reasonable and necessary for public protection to adopt rules that will outline the process for initial certification, training, testing, renewal, and discipline of both certified euthanasia agencies and euthanasia technicians. These rules will affect all those seeking certification in Montana to obtain and/or administer a controlled substance for the purpose of animal euthanasia.

6. Concerned persons may present their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdrvvet@state.mt.us](mailto:dlibsdrvvet@state.mt.us), and must be received no later than 5:00 p.m., April 23, 2004.

7. An electronic copy of this Notice of Public Hearing is available through the Department and Board's site on the World Wide Web at <http://www.discoveringmontana.com/dli/vet>. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The Board of Veterinary Medicine maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this Board. Persons who wish to have their name added to the list must make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to



receive notices regarding all Board of Veterinary Medicine administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Veterinary Medicine, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdrv@state.mt.us, or may be made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been met.

10. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF VETERINARY MEDICINE  
John Smith, DVM, PRESIDENT

/s/ WENDY J. KEATING  
Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

/s/ MARK CADWALLADER  
Mark Cadwallader  
Alternate Rule Reviewer

Certified to the Secretary of State March 15, 2004.